

### **REMARKS**

The applicants have carefully considered the official action mailed on October 9, 2007, and the references cited therein. In the official action, claims 1-4, 30, 31, 39-43, and 48-53 were rejected under 35 U.S.C. §103(a) as unpatentable over “Stores Urged to Use Consumer Panels,” by Laura Klepacki (hereinafter “Klepacki”) in view of Yamamoto et al. (U.S. Patent No. 5,854,746 – hereinafter “Yamamoto”) and in further view of the Supreme Court’s decision in KSR International Co. v. Teleflex Inc. Additionally, claims 5-29, 32-38, and 44-47 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim.

By way of this response, claims 1, 23, 24, 30, 39, 43, 44, 46, 48, and 49 are amended, and claims 54-57 are added for consideration, leaving claims 1-57 pending in this application, of which claims 1, 30, 39, and 43 are independent. Of the aforementioned amended claims, amendments to claims 23, 24, 46, 48, and 49 correct minor typographical errors. No new matter has been added, and favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

### **Rejections Under 35 U.S.C. §103**

Turning to the art rejections, the applicants respectfully submit that independent claim 1 is allowable over the art of record. Independent claim 1 is directed to a method of estimating purchases that, *inter alia*, determines a relationship between purchases made by panelists from a supplier of interest and purchases made by panelists from other suppliers, reads customer data associated with a preferred customer program regarding purchases made by the customers from the supplier of

interest, and based upon the customer data and the relationship, estimates the purchases made by the customers from the other suppliers. None of the cited references describes or suggests determining a relationship between purchases made by panelists from a supplier of interest and purchases made by panelists from other suppliers, reading customer data associated with a preferred customer program regarding purchases made by the customers from the supplier of interest, and based upon the customer data and the relationship, estimating the purchases made by the customers from the other suppliers, as recited in claim 1.

Unlike customer data associated with a preferred customer program, Klepacki describes using panelist data to better target a market. In particular, Klepacki describes a panel of 40,000 households from which it collects information on demographics and buying habits, and such consumer panel data allegedly enables retailers to learn what their customers buy at competing stores. However, Klepacki fails to describe or suggest any other type of data to accomplish their objective(s), much less describe or suggest customer data associated with a preferred customer program.

To the extent that Klepacki fails to describe or suggest customer data associated with a preferred customer program, Klepacki can not, and does not, based upon the customer data and the relationship, estimate the purchases made by the customers from the other suppliers. In particular, the examiner appears to agree that Klepacki fails to discuss a relationship “between the two sets of customer purchase data” (*see official action, page 5, last sentence, through page 6, first paragraph*). However, the applicants respectfully submit that the terms “customer data” and “panelist data” refer to different types of data. Thus, the applicants respectfully submit that the panelist data described by Klepacki is not fairly construed as customer

data, much less the customer data associated with a preferred customer program recited in claim 1. Accordingly, Klepacki is completely devoid of customer data associated with a preferred customer program.

Similarly, Yamamoto fails to describe or suggest customer data associated with a preferred customer program. Instead, Yamamoto describes a production and material resource planning system to insure timely procurement of raw materials without the disadvantage of carrying excessive raw material inventories. A scale-up estimating routine is employed by Yamamoto to determine, in part, a production size based on sales information received from a plurality of point-of-sale (POS) terminal units.

The POS terminal units described by Yamamoto are installed at retail outlets and transmit information related to product information and quantity sold, but such information is devoid of customer data, much less customer data associated with a preferred customer program. Rather, the scale-up estimating routine utilizes an equation (*see Yamamoto, 8:15-17*) that considers a value for the number of units sold at a sample outlet, as well as outlet store sales data that has occurred in the past. However, none of the data employed in the equation by Yamamoto is customer data.

At best, Yamamoto describes a product characteristics data table in which the associated products include a product classification, a price classification, a consumer age classification, and a merchandising classification. The consumer age classification, for example, includes numerically identified classes that are represented by values "1" through "5" to indicate, for a particular product, a low age, an intermediate age between the low age and an average age, the average age, an intermediate age between the average age and a high age, and the high age. However, unlike customer data, each of the classifications in the product characteristics data

table described by Yamamoto is determined during product planning and, thus, is completely independent from customer behavior. As such, any associated products having a classification (e.g., product, price, consumer age, etc.) are neither related to customer data regarding purchases made by the customers from the supplier of interest nor are such classifications fairly construed as customer data associated with a preferred customer program.

As a result, because neither Klepacki nor Yamamoto, alone or in combination, describes determining a relationship between purchases made by panelists from a supplier of interest and purchases made by panelists from other suppliers, reading customer data associated with a preferred customer program regarding purchases made by the customers from the supplier of interest, and based upon the customer data and the relationship, estimating the purchases made by the customers from the other suppliers, no combination of Klepacki and Yamamoto can render amended claim 1 obvious.

The applicants respectfully request that the rejection of independent claim 1 be withdrawn for at least the foregoing reasons. Accordingly, the rejection of claims 2-29, dependent upon independent claim 1, must also be withdrawn for the foregoing reasons.

The applicants also respectfully submit that independent claims 30, 39, and 43, as amended, are allowable over the art of record for reasons similar to those set forth above in connection with independent claim 1.

In particular, claim 30 is directed to a method of estimating purchases that, *inter alia*, reads customer data associated with a preferred customer program regarding purchases made by customers from a supplier of interest and, based upon the customer data and panelist data, estimates purchases made by the customers from

the other suppliers. As discussed above in view of claim 1, neither Klepacki nor Yamamoto describes or suggests customer data associated with a preferred customer program, much less reading customer data regarding purchases made by customers from a supplier of interest and, based upon the customer data and panelist data, estimating purchases made by the customers from the other suppliers. As such, the applicants respectfully request that the rejection of claim 30, and claims 31-38 dependent thereon, be withdrawn.

Additionally, claim 39 is directed to a method of estimating purchases that, *inter alia*, estimates purchases by customers from other suppliers based upon a linear relationship and at least one customer predictor variable based on customer data associated with a preferred customer program. For reasons similar to those discussed above in connection with independent claims 1 and 30, neither Klepacki nor Yamamoto describes or suggests customer data associated with a preferred customer program, much less estimating purchases by customers from other suppliers based upon a linear relationship and at least one customer predictor variable based on the customer data. As such, the applicants respectfully request that the rejection of claim 39, and claims 40-42 dependent thereon, be withdrawn.

Claim 43 is directed to a system for estimating purchases that includes, *inter alia*, analyzing customer purchase data associated with a preferred customer program and indicative of purchases made by customers from a supplier of interest and purchases made by panelists. As discussed above, neither Klepacki nor Yamamoto describes or suggests customer data, much less analyzing customer purchase data associated with a preferred customer program and indicative of purchases made by customers from a supplier of interest and purchases made by panelists. As such, the

applicants respectfully request that the rejection of claim 43, and claims 44-53 dependent thereon, be withdrawn.

New dependent claims 54-57 are also allowable. In particular, these claims depend directly from corresponding amended independent claims 1, 30, 39, and 43 that are believed to be allowable over the art of record.

Thus, for at least the foregoing reasons, the applicants respectfully submit that all pending claims are now in condition for allowance. If there are any remaining issues in this application, the applicants urge the examiner to contact the undersigned agent at the number listed below.

The Commissioner is authorized to charge any deficiency in the enclosed check toward payment of any fee due for the filing of this paper to deposit account number 50-2455.

Respectfully submitted,

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